

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LILLIAN I. COFFMAN

824 Excelsior Avenue Croydon, PA 19021

Plaintiff

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3108

V.

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No.:

ASSET ACCEPTANCE, LLC

28405 Van Dyke Avenue Warren, MI 48090

Defendant

Jury Trial Demanded

COMPLAINT

INTRODUCTION

1. This is a lawsuit for damages brought by an individual consumer for Defendant(s)' alleged violations of the Fair Debt Collection Practices Act, 15 U.S.C. 1692, et seq. (hereinafter "FDCPA") and the Pennsylvania Fair Credit Extension Uniformity Act, 73 P.S. Section 2270.1 et seq. (hereafter "FCEUA"), constituting untair and deceptive acts and practices under the Pennsylvania Unfair Trade Practices and Consumer Protection law, 73 P.S. Section 201-1, et seq. (hereafter "UTPCPL"). These laws prohibit debt collectors from engaging in abusive, deceptive and unfair collection practices.

JURISDICTION AND VENUE

2. All previous paragraphs of this complaint are incorporated by reference and made

part of this complaint.

- Jurisdiction of this Court arises under 15 U.S.C. Section 1692k(d), 28 U.S.C. Section 1331, 1337 and supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. Section 1367. Venue is proper in accordance with 28 U.S.C. Section 1391(b).
- 4. Defendant obtains the benefit(s) of regularly transacting business in Bucks County, in the Commonwealth of Pennsylvania.
- Defendant regularly transacts business in Bucks County, in the Commonwealth Pennsylvania.

PARTIES

- 6. All previous paragraphs of this complaint are incorporated by reference and made a part of this Complaint.
- 7. Plaintiff is Lillian I. Coffman, an adult individual, (hereinafter "Plaintiff") with a current address of 824 Excelsior Avenue, Croydon, PA 19021.
- 3. Defendant(s) is Asset Acceptance, LLC (hereafter "Defendant") a business engaged in consumer debt collection with a principle place of business located at 28405 Van Dyke Avenue, Warren, MI 48090.

FACTUAL BACKGROUND

9. All previous paragraphs of this Complaint are incorporated by reference as though fully set forth herein.

10. On or about years 2008-2010, Plaintiff had a consumer account with Bank of America/FIA Card Services (hereinafter "BOA" account) with an account number of 549035599915***.

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- 11. Plaintiff's said account was a consumer account which was used for personal, family and household purposes.
- 12. On or about June 2010, BOA charged off the balance of Plaintiff's account number 549035599915*** for the amount of \$5,422.00. On or about September 2012 Defendant purchased and acquired said account from BOA.
- 14. On or about September 2012, when Defendant acquired the account, Defendant added on interest to the account to bring the opening balance of the account when placed with Defendant to a total of \$5,975.00 (Equifax and Trans Union). (See attached credit reports, Exhibit "A.")
- Defendant stated on said Credit Reports Equifax and Trans Union, that Plaintiff owes the \$5,975.00 balance (Equifax) and \$5,969.00 balance (Trans Union) regarding said BOA account. Further, it is believed and therefore averred that during the past 365 days, on a monthly basis, Defendant reported and continues to report said balances as owing regarding said BOA account on said credit reports. (See attached Credit Reports, Exhibit "A.")
- 16. It is believed and therefore averred that this interest demand is an intentional misstatement of any amount which could allegedly be owed by Plaintiff to Defendant.
- 17. It is further believed and therefore averred that upon charge-off, the original Creditor (BOA bank) waived the assessment of further interest on the account, and stopped sending monthly statement to Plaintiff which notified Plaintiff of any interest.

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See McDonald v. Asset Acceeptance, LLC, U.S. District Court for the Eastern District of Michigan, Case No.: 11-cv-13080 (2013) and Simkus v. Cavalry Portfolio, Case No.:11-cv-7425, U.S. District Court for the Northern District of Illinois (2012).

- 18. As interest was waived at charge-off by the original Creditor (BOA), Defendant did <u>not</u> acquire the right(s) to assess contractual rate interest beyond charge-off for the period between charge-off and Defendant's acquisition of the account.
- 19. As interest was waived at charge-off by the original Creditor, Defendant did <u>not</u> acquire the right(s) to assess contractual rate interest even subsequent to its acquisition of the account. See <u>McDonald v. Asset Acceeptance, LLC</u>, U.S. District Court for the Eastern District of Michgan, Case No.: 11-cv-13080 (2013) and <u>Simkus v. Cavalry Portfolio</u>, Case No.:11-cv-7425, U.S. District Court for the Northern District of Illinois (2012).
- 20. By application of the Doctrine of Waiver, any demand for contractual interest misstated any amount allegedly due and owing on the account.
- 21. Defendant retroactively imposed interest which the original Creditor waived.
- 22. The retroactive addition of interest by Defendant, which the original Creditor waived is improper. An assignee steps into the shoes of the assignor as of the date the assignor sells the account, and does not have the right to retroactively reverse the assignor's business decision to not charge interest during a period when the assignee did not hold or own the account.
- 23. "The rule is that an assignee of a contract takes it subject to the defenses which existed against the assignor at the time of assignment." <u>Allis-Chalmers Credit Corp. v. McCormick</u>, 30 Ill. App.3d 423, 331 N.E. 2d 832, 833 (4th Dist. 1975). <u>Accord</u>

Montgomery Ward & Co. v. Wetzel, 98 Ill. App. 3d 243, 423 N.E. 1170, 1175, 53 Ill. Dec. 366 (1st Dist. 1981) ("the assignee thus takes the assignor's interest subject to all legal and equitable defenses existing at the time of assignment").

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- When Defendant retroactively imposed interest, which the original Creditor waived, Defendant misstated the amount of the alleged debt and also attempted to collect an amount which Defendant was not legally allowed to collect, in violation of 15 U.S.C. Section 1692e *et seq.* and 15 U.S.C. 1692f *et seq.* of the FDCPA.
- 25. Defendant knew or should have known that its actions violated the FDCPA and could have brought its actions within compliance of the FDCPA, but failed to do so.
- At all times material hereto the conduct of Defendant as well as its agents, servants and/or employees was malicious, intentional, willful, reckless, negligent and in wanton disregard for federal and state law and the rights of the Plaintiff.

STANDING

- 27. All previous paragraphs of this Complaint are incorporated by reference as though fully set forth herein.
- 28. Plaintiff has standing to bring this action per 15 U.S.C. Section 1692k, because Plaintiff was affected by Defendant's unlawful debt collection activity.
- 29. The three basis components of standing under Article III of the U.S. Constitution are present in this case, "injury, causation and redressability." See <u>Foundation, Inc. v</u>
 Obama, 641 F.3d 803, 805 (7th Cir. 2011).
- 30. Plaintiff suffered an injury because of the harm to his/her consumer credit report which was caused by the misconduct described in this Complaint.

31. Plaintiff suffered an injury because his rights under the FDCPA were compromised.

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- 32. This action is intended by Plaintiff to redress such harm upon a favorable verdict or settlement of the case.
- 33. Plaintiff need not quantify the amount of the harm or injury suffered in order to establish standing under Article III of the Constitution.
- 34. Plaintiff need not establish a dollar value of the amount of the harm or injury suffered in order to establish standing under Article III of the Constitution.
- 35. Plaintiff need not prove actual damages with regard to the harm or injury suffered in order to establish standing under Article III of the Constitution.

COUNT I VIOLATION OF THE FDCPA 15 USC 1692 et. seq.

- 36. All previous paragraphs of this Complaint are incorporated by reference as though fully set forth herein.
- 37. Plaintiff is a consumer debtor as defined by the Fair Debt Collection Practices Act (FDCPA), 15 USC 1692a(3).
- 38. Defendant is a debt collector as defined by the FDCPA, 15 USC 1692a(6).
- 39. At all times mentioned herein, Defendant was attempting to collect on an alleged consumer "debt" against Plaintiff through "communications" as defined by FDCPA 15 U.S.C. Section 1692a(2) and 1692a(5).
- 40. Defendant violated the FDCPA, 15 U.S.C Sections, 1692d, 1692e, 1692e(2), 1692e(10), 1692f and in the following manner:

- Engaging in conduct the natural consequence of which is to harass,
 oppress or abuse any person in connection with the collection of a debt;
- (b) False representation of the amount of the debt;

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- (c) Attempting to collect an amount which Defendant was not legally allowed to collect;
- (d) Using false representation, unfair, deceptive or unconscionable means to collect or attempt to collect a debt which is not authorized by law.
- 41. Defendant engaged in per se violations of the FDCPA, 15 U.S.C. Sections 1692d, 1692e and 1692f.
- The FDCPA is a strict liability statue and "because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997);

 Russell v. Equifax A.R.S., 74 F.3d 30 (2d Cir. 1996).
- 43. Defendant's actions and/or omissions as described above were malicious, intentional, willful, wanton, reckless and negligent against Plaintiff.
- 44. Plaintiff was distressed and suffered from embarrassment, stress and anxiety.
- 45. Defendant is liable for the acts committed by its agents under the doctrine of respondent superior because Defendant's agents were acting within the scope of their employment with Defendant.
- 46. In the alternative, Defendant(s) is liable for the conduct of its agents / employees under the theory of joint and several liability because Defendant and its agents /

employees were engaged in a joint venture and were acting jointly and in concert.

- 47. Plaintiff reserves the right to pierce the corporate veil under the doctrines of under-capitalization and/or alter ego.
- 48. Any mistake made by Defendant would have included a mistake of Law.
- 49. Any mistake made by Defendant would not have been a reasonable or bona fide Mistake.
- 50. As a result of the above violation of the FDCPA, Plaintiff has suffered losses entitling Plaintiff to statutory, actual and punitive damages and attorney's fees and costs.

VIOLATION OF THE FCEUA AND UTPCPL

- 51. All previous paragraphs of this Complaint are incorporated by reference as though fully set forth herein.
- 52. Defendant is a "debt collector" pursuant to 73 P.S. Section 2271.3 of the FCEUA.
- 53. Plaintiff is a "debtor" pursuant to 73 P.S. Section 2271.3 of the FCEUA.
- 54. The above contacts by Defendant are "communications" relating to a "debt" pursuant to 73 P.S. Section 2271.3 of the FCEUA.
- Defendant engaged in unfair methods of competition and unfair and/or deceptive acts or practices pursuant to the UTPCPL, by attempting to collect the debts in violation of the FCEUA. Defendant's violations of the FCEUA and UTPCPL include, but are not limited to violations of 73 P.S. Section 2270.4(a) as follows:

- Engaging in conduct the natural consequence of which is to harass,
 oppress or abuse any person in connection with the collection of a debt;
- (b) Attempting to collect an amount which Defendant was not legally allowed to collect;
- (c) False representation of the amount of the debt;
- (d) Using false representation, unfair, deceptive or unconscionable means to collect or attempt to collect a debt which is not authorized by law.
- 56. Defendant's actions and/or omissions as described above were malicious, intentional, willful, wanton, reckless and negligent against Plaintiff.
- 57. As a result of the above violation of the FDCPA, Plaintiff has suffered losses entitling Plaintiff to statutory, actual and punitive damages and attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the following relief be granted:

(a) Actual damages;

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- (b) Statutory Damages;
- (c) Punitive Damages;
- (d) Costs and reasonable Attorneys' fees; and
- (e) All other relief that the Court deems just and proper.

Respectfully Submitted,

BLITSHTEIN & WEISS, P.C.

By:

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Southampton, PA 18966

(215)364-4900

Fax (215)364-8050

Attorneys for Plaintiff

Date: 5/30/2014

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Exhibit "A"

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\$39

\$50

12/13 \$1,217

Credit Card

\$1,250

12/1/2013

\$1,295

ionique of Fredit Report for LILLIAN INEZ COFFMAN -03108-GAM Document 1 Filed 06/02/12 Number 1348 Date Issued: 05/16/2014

Adverse Accounts

APEX ASSET MANAGEMENT #3151**** (PO BOX 7044, 1891 SANTA BARBARA STE204, LANCASTER, PA 17604-7044, (717) 519-1770)

Placed for collection: 12/05/2013

Balance:

\$188

Pay Status: >In Collection<

Pay Status: >In Collection<

Pay Status: >Charged Offk

Date Closed: 02/02/2010

Paid Monthly

for \$930 and in 05/2010 for \$1,1454

>Maximum Delinquency of 120 days in 04/2010

Terms:

Responsibility: Account Type:

Individual Account Open Account

Date Updated:

02/19/2014 \$188

Loan Type:

COLLECTION AGENCY/ATTORNEY

Original Amount: Original Creditor:

MEDICAL-LOURDES CARDIOLOGY SERVICES P (Medical/Health Care)

Past Due:

>\$188<

Remarks: >PLACED FOR COLLECTION

Estimated month and year that this item will be removed: 04/2020

ASSET ACCEPTANCE LLC #12276**** (PO BOX 1630, WARREN, MI 48090-1630, (800) 545-9931)

Responsibility:

Placed for collection: 09/01/2012 Individual Account Balance:

\$5,969 05/09/2014

Date Updated:

\$5,422

Open Account **Account Type:** FACTORING COMPANY ACCOUNT Loan Type:

Original Amount: Original Creditor:

FIA CARD SERVICES N A (Retail)

Past Due:

>\$5,9694

Remarks PLACED FOR COLLECTION

Estimated month and year that this item will be removed: 12/2016

BANK OF AMERICA #549035699915**** (POBOX 982235, EL PASO, TX 79998-2235, (800) 655-1491)

Date Opened: Responsibility: Account Type:

Loan Type:

02/11/2008 Individual Account

CREDIT CARD

Revolving Account

Balance:

\$0

08/28/2012

Payment Received: \$0

Last Payment Made: 10/26/2009

High Balance: Original Charge-off: \$5,422

Date Updated:

\$5,422

Credit Limit: \$4,200

Remarks: PURCHASED BY ANOTHER LENDER; >UNPAID BALANCE CHARGED OFF

Fstimated month and year that this item will be removed: 12/2016

Estimated inc	mın anu year	that this iten	MILL DE JEINE	Veu. 12/20.								
	07/2012	06/2012	05/2012	04/2012	03/2012	02/2012	01/2012	12/2011	11/2011	10/2011	09/2011	08/2011
Rating	X	X	X	X	X	X	X	X	X	X	X	X
	07/2011	06/2011	05/2011	04/2011	03/2011	02/2011	01/2011	12/2010	11/2010	10/2010	09/2010	08/2010
Rating	X	×	X	X	X	X	N/R	N/R	N/R	N/R	N/R	N/R
	07/2010 /	06/2010	05/2010	04/2010	03/2010	02/2010	01/2010	12/2009	11/2009	10/2009	09/2009	08/2009
Rating	N/R	0/0	120	120	90	60	30	OK	OK	OK	OK	OK
	07/2009 0	6/2009 05/2	009 04/2009	03/2009	2/2009 01/2	009 12/2008	11/2008 10	0/2008 09/20	008 08/2008	07/2008 06	/2008 05/20	08 04/2008
Rating	ОК	OK OK	OK	OK	OK OI	(OK	OK	OK OK	ОК	OK [ок ок	OK
	03/2008											
Rating	OK					·			-			

CAPITAL ONE BANK USA NA #412174704868**** (PO BOX 30281, SALT LAKE CITY, UT 84130, (800) 955-7070)

Date Opened: Responsibility: 12/24/1998

Individual Account

Date Updated: 05/04/2014

Last Payment Made: 12/16/2009

Pay Status: >Charged Offe Paid Monthly Terms:

Account Type: Revolving Account CREDIT CARD Loan Type:

Original Charge-off: \$3,190

Date Closed: 09/05/2010 >Maximum Delinquency of 120 days in 06/2010

and in 07/20104

High Balance: High balance of \$3,190 from 11/2011 to 05/2014 Credit Limit: Credit limit of \$2,700 from 11/2011 to 05/2014

Estimated month and year that this item will be removed: 02/2017

	05/2014	04/2014	03/2014	02/2014	01/2014	12/2013	11/2013	10/2013	09/2013	08/2013	07/2013	06/2013
Balance	\$3,769	\$3,753	\$3,739	\$3,723	\$3,708	\$3,692	\$3,677	\$3,661	\$3,646	\$3,630	\$3,614	\$3,599
Scheduled										-		
Payment												
Amount Paid							\$0	\$0	\$0	\$0	\$0	\$(
Past Due	\$3,769	\$3,753	\$3,739	\$3,723	\$3,708	\$3,692	\$3,677	\$3,661				\$3,595
Remarks	CBG/PRL	CBG/PR										
Rating	C/0	C/0	C/0	C/O	C/O	c/o	C/0	C/O	C/0	C/0	C/O	C/O
	05/2013	04/2013	03/2013	02/2013	01/2013	12/2012	11/2012	10/2012	09/2012	08/2012	07/2012	06/2012
Balance	\$3,583	\$3,568	\$3,553	\$3,540	\$3,648	\$3,632	\$3,629	\$3,611	\$3,595	\$3,578	\$3,562	\$3,540
Scheduled Payment											\$0	\$(
Amount Paid	\$0	\$0	\$0	\$0	\$0		\$0	\$0	\$0	\$0	\$0	\$(
Past Due	\$3,583	\$3,568	\$3,553	\$3,540	\$3,648	\$3,632	\$3,629	\$3,611	\$3,595	\$3,578	\$3,562	
Remarks	CBG/PRU	CBG/PRL	CBG/PRL	CBG/PRL	CBG/PRL	CBG/PRU	CBG/PRI	CBG/PRL		CBG/PRU	CBG/PRU	CBG/PR
Rating	C/O	C/O	C/O	C/0	C/O	C/0	C/O	C/0	C/O	C/0	C/O	c/o